



INTERIOR BOARD OF INDIAN APPEALS

Francis C. Adams v. Rocky Mountain Regional Director, Bureau of Indian Affairs

36 IBIA 286 (08/24/2001)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

FRANCIS C. ADAMS,
Appellant

v.

ROCKY MOUNTAIN REGIONAL
DIRECTOR, BUREAU OF INDIAN
AFFAIRS,
Appellee

: Order Docketing and Dismissing
: Appeal
:
:
: Docket No. IBIA 01-163-A
:
:
:
: August 24, 2001

On August 20, 2001, the Board of Indian Appeals received a notice of appeal from Francis C. Adams (Appellant), who seeks review of a June 15, 2001, decision issued by the Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning delinquent operation and maintenance charges for the Fort Belknap Irrigation Project.

Because Appellant's notice of appeal appeared to be untimely, the Board asked the Regional Director to furnish the Board with a copy of the return receipt for certified mail (green card) for Appellant's copy of the June 15, 2001, decision. That copy has now been received. It shows that the green card was signed by Appellant, indicating that he received the decision, but does not show the date on which he received it. A BIA date stamp shows that the green card was returned to the Regional Office on June 25, 2001. BIA's transmittal memorandum explains that the green card was date stamped in the Regional Office because it was lacking a date for Appellant's receipt of the decision.

The Regional Director's June 15, 2001, decision states at page 3:

This decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.340. Your Notice of Appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. * * * You must send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs, * * * (2) each interested party known to you (including the Fort Belknap Agency), and (3) this office. Your Notice of Appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties. If you file a Notice of Appeal, the Board of Indian Appeals will notify you of further appeal procedures.

This statement is correct except for the incomplete citation to the Board's regulations. (The citation should have been "43 C.F.R. §§ 4.310-4.340.") In addition, the statement omits the final paragraph of BIA's standard appeal instructions: "If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal."

While the language omitted by the Regional Director would have underscored the importance of filing a timely notice of appeal, the omission does not render the instructions incorrect, because Appellant was given the information he needed to ensure that his notice of appeal was timely. For the same reason, the incomplete citation to the Board's regulations is not critical.

The Board finds that the Regional Director's June 15, 2001, decision was in compliance with 25 C.F.R. § 2.7(c), which provides: "All written decisions * * * shall include a statement that the decision may be appealed pursuant to this part, identify the official to whom it may be appealed and indicate the appeal procedures, including the 30-day time limit for filing a notice of appeal." ^{1/}

Having been given these instructions, Appellant was obligated to follow them in order to have his notice of appeal considered timely. He did not do so. It is apparent that he received the Regional Director's decision sometime prior to June 25, 2001. For purposes of this order, however, the Board considers June 25, 2001, to be the date he received it. His notice of appeal is postmarked August 16, 2001, and is clearly untimely because it was mailed more than 30 days after June 25, 2001.

Appellant contends that he should be given an extension of time for filing his notice of appeal because, in an August 10, 2001, letter to Appellant, the Regional Director stated: "Due to changes in the Federal Regulations, 43 CFR 4.340 is no longer the correct regulation to use in appeals. The correct regulation is 25 CFR [Part] 2. If you decide to appeal, your appeal should be submitted in accordance with the regulations in 25 CFR [Part] 2." Appellant states that he received this letter on August 14, 2001.

^{1/} In its entirety, 25 C.F.R. § 2.7 provides:

"(a) The official making a decision shall give all interested parties known to the decisionmaker written notice of the decision by personal delivery or mail.

"(b) Failure to give such notice shall not affect the validity of the decision or action but the time to file a notice of appeal regarding such a decision shall not begin to run until notice has been given in accordance with paragraph (c) of this section.

"(c) All written decisions * * * shall include a statement that the decision may be appealed pursuant to this part, identify the official to whom it may be appealed and indicate the appeal procedures, including the 30-day time limit for filing a notice of appeal."

Appellant was understandably confused by the August 10, 2001, letter. Had that letter been sent earlier, during Appellant's 30-day period for appealing the June 15, 2001, decision, it might well have tainted the appeal instructions in the June 15, 2001, decision sufficiently to toll Appellant's time for filing a notice of appeal. See 25 C.F.R. § 2.7(b), quoted in footnote 1; cf., e.g., Alan-Wilson v. Sacramento Area Director, 30 IBIA 241, recon. denied, 31 IBIA 4 (1997) (BIA's failure to give the appeal instructions required by 25 C.F.R. § 2.7(c) tolls the time for filing a notice of appeal). However, the Board need not reach that issue here because it finds that, by the time the Regional Director sent his August 10, 2001, letter, Appellant's time for appealing the June 15, 2001, decision had already expired. Accordingly, the Regional Director's August 10, 2001, letter cannot excuse Appellant's failure to file a timely notice of appeal from the June 15, 2001, decision.

The Board is prohibited by regulation from considering an untimely appeal. See 43 C.F.R. § 4.332(a) ("A notice of appeal not timely filed shall be dismissed for lack of jurisdiction"). Further, the Board is precluded from granting an extension of time for filing a notice of appeal. See 43 C.F.R. § 4.310(d) ("The time for filing or serving any document except a notice of appeal may be extended by the Board" (Emphasis added)). Accordingly, no extension of time may be granted in this case.

Appellant has failed to file a timely notice of appeal from the Regional Director's June 15, 2001, decision. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed but is dismissed as untimely. 2/

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

2/ The basis for the Regional Director's August 10, 2001, letter is not clear. Neither BIA's appeal regulations in 25 C.F.R. Part 2 nor its irrigation operation and maintenance regulations in 25 C.F.R. Part 171 have been recently revised.

In any event, although an appellant's right to appeal may arise under BIA program regulations and/or 25 C.F.R. Part 2, when his/her appeal is to the Board, Board procedural regulations must be followed. See 25 C.F.R. § 2.4(e). In order to avoid compromising the appeal rights of any party, the Regional Director should ensure that he includes BIA's standard appeal instructions in his decisions.

The Regional Director is also reminded that, as discussed above, his failure to give appeal instructions which comply with 25 C.F.R. § 2.7(c) will toll the time for filing appeals until proper instructions are given.